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EXAMINER

Johnson, Raymond B

ART UNIT PAPER NUMBER

3652

DATE MAILED: 12/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/070,635

Applicant(s)

Ihio Kazu Kimura

Examiner

Johnson, R. B.

Group Art Unit

3652

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three (3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 3/01/02
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-11 is/are pending in the application.
- Of the above claim(s) 5-7, 10 and 11 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-4, 8-11 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 5
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

OFFICE ACTION

- 1a. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
- 1b. The preliminary amendment (paper No. 4 filed on 3/1/02) has been entered.
2. The documents submitted in the IDS (paper No. 5 filed on 05/09/03) has been considered.
3. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Species A, Figs. 1-6;

Species B, Figs. 7-9; and

Species C, Fig. 10.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims

are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

4. The claims are deemed to correspond to the species listed above in the following manner:

species A claims 1-4, 8 and 9;

species B claims 1, 5, 6 and 7; and

species C claim 1.

The following claim(s) are generic: claim 1.

Newly submitted claims 10 and 11 do not appear to be directed to any one of the above

designated species.

5. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: species A does not contain the horizontal aisles as shown in species B. Species B does not contain the circular track contained in species A. Neither species A nor B contain the arranged elements 32, 34 and 35 as shown in species C. Species C does not contain the horizontal aisles and circular track of species B and A, respectively.

6. During a telephone conversation with Mr. Katshiro Arai on 09/25/03 (09/26/03 election made) a provisional election was made with traverse to prosecute the invention of species A, claims 1-4, 8 and 9. Affirmation of this election must be made by applicant in replying to this Office action. Claims 5, 6, and 7 stand withdrawn from further

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consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 10 and 11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The subject matter of the newly submitted claims 10 and 11 does not appear to be supported by the original disclosure.

These claims (10 and 11) will be hereafter be held withdrawn absence evidence of support in the original disclosure.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claim 1 is rejected under 35 USC 102(b) as failing to define any novelty over Beecher et al. Note Beecher et al's corresponding elements; 30-34; 24; 38-39 (elevation/"table"); 36-37; and 48-49.

10. Claims 2-4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beecher et al (described above) in view of either Shaher et al (Fig 13) or the Italian patent No. 619, 225 (herein after N).

Beecher et al disclose a rectangular shaped storage apparatus with linear horizontal rails (24) in lieu of the recited circular/"ring-like rail". The secondary references show cylindrical shaped storage devices.

It would have been obvious to modify Beecher et al storage apparatus by changing its shape from a rectangular to a cylindrical configuration as taught by the secondary references for geometric/space considerations. Thus, it would have been a necessary expedient to make the carriage supporting rails 24 of Beecher et al of a complementary shape i.e. "ring-like"/cylindrical.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beecher et al in view of either Shahar et al or N as applied to claims 2-4 and 8 in section 10 above, and further in view of either Manaugh (27-28, Fig. 2) or Jung (5, 38, 45, Figs. 1 and 11). The latter applied references teach plural carriage supports for a horizontally movable elevator.

Beecher et al and the applied secondary disclose and/or render obvious the claimed apparatus (per section 10) except for plurality of vertically spaced supports/"carriages" for the horizontally movable elevator.

It would have been obvious to provide Beecher et al (as modified) with a plurality of vertically spaced support carriage to support the movable elevator frame because it is: a) duplication of parts; and b) the teaching of the latter applied secondary references who show it is common in the art to support a horizontally movable elevator on a plurality of vertically spaced carriages.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The pertinent portions of the prior art is referenced to by numerals and/or Figs.

O (8, 9, Figs. 1-4, column 3, lines 33-44); P (Figs. 1-3); Q (Figs. 1 and 2); and E (28, 34, 34a).

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond B. Johnson whose telephone number is (703) 308-2565. The examiner can normally be reached on Monday-Thursday from 6:30-9:30 A.M. to 5:00-8:00 P.M.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, E. D. Lillis, can be reached on (703) 308-3248. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177.



EILEEN D. LILLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600



Johnson/kn
October 2, 2003